IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 5 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

INNOSEARCH LIMITED

Versus

COMMISSIONER OF INCOM-TAX

Appearance:

1. INCOME TAX REFERENCE No. 5 of 1999

MR RK PATEL for Petitioner No. 1

MR MIHIR H JOSHI with MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 07/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the assessee, the Income Tax Appellate Tribunal, Ahmedabad has referred the following question for our opinion in respect of assessment year 1984-85:-

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the lower authorities were justified in disallowing a sum of Rs.28612/- incurred by the assessee as Dealers' Boards & Hoardings, Display and Dealers Aid under sec. 37(3A) of the I.T. Act, 1961 ?"

2. We have heard Mr RK Patel learned counsel for the assessee and Mr Mihir H Joshi learned counsel for the revenue.

3. Our attention is invited to the decision dated 29-4-1999 of this Court in Income Tax Reference No.292 of 1984 wherein a similar question was considered by this Court. That reference arose from the Tribunal's order dated 24-2-1984 in Income Tax Appeal No.917/Ahd/82 for the assessment year 1979-80. In the instant case, the Tribunal had followed the said order for confirming the disallowance of the sum of Rs.28,612/- incurred by the assessee as Dealer' Boards & Hoardings, Display and Dealers Aid under sec. 37(3A) of the I.T. Act, 1961.

4. In the aforesaid decision, this Court held that on consideration of material whether a particular item is aimed to attract the consumer or is merely an aid of selling is a question of fact and does not give rise to a question of law. Since in that case the Tribunal had come to a conclusion that expenses on these items are primarily aimed to attract the consumer and was part of publicity expenditure, this Court held that it was a conclusion of fact and it did not give rise to any question of law.

5. In view of the fact that in the instant case also, the Tribunal has given a similar finding of fact, following the aforesaid decision, we are also of the view that the finding of the Tribunal is a finding of fact and does not give rise to any question of law. We accordingly decline to answer the question referred to us as, in our opinion, it is not a question of law.

6. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-